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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,339	06/20/2003	Larry P. LaPointe	1202P-000363	8467
27572	7590	09/23/2004		
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
			EXAMINER D ADAMO, STEPHEN D	
			ART UNIT 3636	PAPER NUMBER

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/601,339

Applicant(s)

LAPOINTE ET AL.

Examiner

Stephen D'Adamo

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MM

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Double Patenting***

2. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/761,110. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the reclining mechanism of this current application (LaPointe 10/601,339) with an operator having a drive shaft extending therefrom, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the reclining mechanism of LaPointe (10/601,339) by moving the operator to various locations, since it has been held that rearranging parts of an invention involves only routine skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 7, 8, 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaPointe et al. (5,806,921) in view of Jackson et al. (4,365,836).

LaPointe discloses a reclining chair having an improved chair frame and pantograph linkage comprising a chair frame assembly including a pair of side frame members 18, a front cross member 22, a rear cross rail 20, a leg rest assembly with left and right pantograph linkages 30, and an actuation mechanism 16 including a drive rod and a front support rod "suspended within the chair and may be operably coupled to a variety of motion linkage assemblies" (col.2, lines 65-66). However, LaPointe fails to expressly disclose a clutch mechanism. Yet, Jackson et al. discloses a motorized reclining chair including a clutch mechanism. Jackson specifically discloses a motor/shaft 50 arrangement including a slip clutch "which prevents turning of shaft 52" (col.7, line 20) in a retracted position beyond Figures 3-5. The slip clutch serves "to allow the motor to continue to operate without turning the shaft" (col.7, lines 34-35). Jackson further discloses limit stops on the motor, as is known in the art, as an alternative to the slip clutch. LaPointe discloses a limit stop 126 and therefore, through Jackson's teachings, it

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the actuation mechanism of LaPointe with a motor including a slip clutch, as taught by Jackson, to allow the motor to continue to operate without turning the shaft. Jackson also generally teaches of shaft or drive rod extending through the motor. Thus, when the motor and slip clutch is placed onto LaPointe's reclining mechanism, the drive rod would also extend through the motor.

Regarding claim 8, Jackson teaches of a motor mount or swivel bracket 46 and pivot 48. "The pivot in the bracket is used to mount the clevis extension of the motor/gear box 50" (col.7, lines 3-5).

In regards to claim 11, LaPointe discloses a similar spacer link 72 as claimed. However, the spacer link of LaPointe is not expressly disclosed as two distinct braces. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make LaPointe's spacer link 72 into two distinct and separate braces, as claimed, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaPointe et al. (5,806,921) in view of Jackson et al. (4,365,836) and in further view of Komorowski et al. (5,435,621).

LaPointe discloses a reclining chair having an improved chair frame and pantograph linkage comprising a chair frame assembly including a pair of side frame members 18, a front cross member 22, a rear cross rail 20, a leg rest assembly with left and right pantograph linkages 30, and an actuation mechanism 16 including a drive rod and a front

support rod “suspended within the chair and may be operably coupled to a variety of motion linkage assemblies” (col.2, lines 65-66). Jackson discloses a motorized reclining chair including a clutch mechanism. Jackson specifically discloses a motor/shaft 50 arrangement including a slip clutch “which prevents turning of shaft 52” (col.7, line 20) in a retracted position beyond Figures 3-5. The slip clutch serves “to allow the motor to continue to operate without turning the shaft” (col.7, lines 34-35). However, neither LaPointe nor Jackson teaches of a return spring biasing the drive rod to rotate in a second direction or a retracted direction. LaPointe does disclose springs, in the drawings, but fails to expressly disclose further details. Yet, Komorowski teaches of a modular reclining chair of similar construction with a return spring or spring-assist toggle assemblies 36, “which work coactively with leg rest pantograph linkages 34” (col.14, lines 58-59). Furthermore, the “toggle assemblies 36 are also operable to supply a spring force for biasingly urging leg rest assembly 16 toward one of its extended and retracted positions” (col.14, lines 62-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of LaPointe in view of Jackson, with a return spring, as taught by Komorowski, for biasing the leg rest in a second direction. Note, by biasing the leg rest in a second direction, it is inherent that the drive rod, which rotates the leg rest, is also biased for rotation in a second direction.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kowalski (6,135,559), Rogers (6,059,367), LaPointe et al. (5,992,931), LaPointe et

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al. (5,570,930), May (5,704,686), Rogers (5,595,420), LaPointe et al. (5,388,886), Mizelle (5,368,366), Roither et al. (2003/0024338) and Neumueller (DE 3,513,334) all show various features of the claimed invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SD

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September 21, 2004

  
Peter M. Cuomo  
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